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CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1965

Introduced by Assembly Members Lieu and Saldana
(Principal coauthor: ~~Assembly Member Calderon~~)
(Coauthors: Assembly Members Jones and Laird)

February 6, 2006

An act to add and repeal Chapter 2.5 (commencing with Section 23040) of Division 10 of the Financial Code, relating to deferred deposit transactions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1965, as amended, Lieu. Deferred deposit transactions: military borrowers.

Existing law provides certain protections for members of the National Guard ordered into active state service by the Governor or active federal service by the President of the United States for emergency purposes, and for reservists called to active duty, as specified.

Existing law, the California Deferred Deposit Transaction Law (CDDTL), provides for the licensure and regulation of persons making

deferred deposit transactions, which are transactions whereby a person defers depositing a customer's personal check until a specific date pursuant to a written agreement. Under existing law, a violation of the CDDTL is punishable as a crime.

This bill would authorize a military borrower, as defined, to defer payments ~~and to enter into a repayment plan~~ with respect to deferred deposit transactions, as provided. The bill would prohibit licensees making deferred deposit transactions from engaging in specified practices with respect to ~~those deferred deposit transactions~~ *military borrowers, including imposing fees, interest, and charges that exceed a specified amount*, and would require those ~~persons~~ *licensees*, before entering into such a transaction with a military borrower, to provide a statement to the borrower explaining his or her rights, as specified. The bill would require the Commissioner of Corporations to enact regulations to implement these provisions and to give notice to licensees, as specified. The bill would provide that a licensee who does not enter into deferred deposit transactions with service members shall not be guilty of or liable for discrimination, as specified. The bill would repeal these provisions on January 1, 2009, unless that date is extended by a subsequently enacted statute. Because the bill would specify additional requirements under the CDDTL, the violation of which would be punishable as a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Chapter 2.5 (commencing with Section 23040)
- 2 is added to Division 10 of the Financial Code, to read:

CHAPTER 2.5. MILITARY BORROWERS

23040. The following definitions apply for purposes of this chapter:

(a) “Date of deployment” means the date that the service member is called to duty in a combat or combat support position. It does not include temporary duty for the sole purpose of training or processing or a permanent change of station.

(b) “Military borrower” means a service member or the spouse of a service member who has used the service member’s income to enter into a deferred deposit transaction.

(c) “Service member” means all of the following individuals:

(1) Active duty members of the Armed Forces of the United States.

(2) Officers and enlisted members of the State Militia called or ordered into active state service for a period of 30 days or more by the Governor pursuant to the provisions of Section 128, 143, or 146 of the Military and Veterans Code or into active federal service for a period of 30 days or more by the President of the United States pursuant to Title 10 or Title 32 of the United States Code.

(3) Reservists of the United States Military Reserve who have been called to full-time active duty for a period of 30 days or more.

23041. (a) A licensee shall not take any of the following actions with respect to a deferred deposit transaction marketed to a service member or a service member’s spouse or entered into with a military borrower:

(1) Collect on a deferred deposit transaction entered into by the military borrower by garnishing any of the service member’s military pay.

(2) Attempt to collect on a deferred deposit transaction by contacting the military chain of command, unless the contact is made in writing as a notice for informational purposes only.

(3) Make a deferred deposit transaction from a specific location to a person that the licensee knows is a service member or the spouse of a service member when the service member’s regional command authority has notified the licensee in writing that the specific location is designated off-limits to military personnel under his or her command.

1 (4) Directly market deferred deposit transactions to a service
2 member or the spouse of a service member in a manner that
3 suggests a military affiliation with a deferred deposit transaction
4 product.

5 (5) Require a military borrower to waive any rights or
6 procedures as a condition of a deferred deposit transaction,
7 including the borrower's right to file and pursue a civil action
8 pursuant to Section 23064.

9 (6) Refuse to transact with a military borrower or otherwise
10 discriminate against a military borrower because he or she
11 refuses to waive any rights or procedures, including the rights
12 and procedures provided for in this division.

13 (b) A waiver of rights or procedures by a military borrower
14 shall be knowing and voluntary and shall not be a condition of a
15 deferred deposit transaction. Any waiver, including an agreement
16 to arbitrate a claim under the deferred deposit transaction law or
17 any other law relating to the deferred deposit transaction, that is
18 required as a condition of the deferred deposit transaction in
19 violation of paragraph (5) or (6) of subdivision (a) shall be
20 deemed unconscionable.

21 (c) A licensee that enters into a deferred deposit transaction
22 with a military borrower has the burden of proving that any
23 waiver of rights or procedures by the military borrower with
24 respect to the transaction, including any agreement to arbitrate a
25 claim, was knowingly and voluntarily made by the military
26 borrower and was not a condition of the transaction.

27 (d) The exercise by a military borrower of the right to refuse to
28 waive legal rights or procedures, including rejection of the
29 agreement to arbitrate, shall not affect any other term of the
30 transaction.

31 23042. (a) *Notwithstanding the provisions of subdivision (a)*
32 *of Section 23035, and due to the direct relationship of personal*
33 *financial health to personal military combat readiness and the*
34 *unique benefits available to service members who are in*
35 *financial need, a licensee may defer the deposit of a military*
36 *borrower's personal check for a period of time greater than 31*
37 *days. A military borrower or the military borrower's*
38 *representative may prepay any amount due at any time without*
39 *charge or penalty and the prepayment shall not result in a*
40 *licensee being in violation of subdivision (b).*

1 ***(b) Fees and interest, including charges for ancillary products***
2 ***and services sold by the licensee incidental to and financed as***
3 ***part of the deferred deposit transaction, payable by a military***
4 ***borrower and imposed by a licensee as a condition of, incident***
5 ***to, attendant to, or arising out of, a deferred deposit transaction***
6 ***shall not, when expressed as an annual percentage rate, exceed***
7 ***36 percent. This annual percentage rate shall be defined by the***
8 ***Federal Truth in Lending Act and its regulations, and as***
9 ***calculated for the full term of the deferred deposit transaction,***
10 ***including any extension of time or payment plan.***

11 23043.(a) Notwithstanding any other provision of law, a
12 military borrower may defer payments on a deferred deposit
13 transaction he or she entered into prior to the date of the service
14 member's deployment.

15 (b) To defer payment on a deferred deposit transaction, the
16 military borrower or his or her representative shall deliver to the
17 licensee a letter signed by the military borrower or his or her
18 representative requesting deferral of payment on the deferred
19 deposit transaction, providing the expected duration of
20 deployment and acknowledging the military borrower's
21 responsibilities for repayment of the amount owing on the
22 deferred deposit transaction.

23 (c) Pursuant to subdivision (b) of Section 23036, the licensee
24 shall not charge an additional fee, interest, finance charge, or any
25 other charge for deferral of payment on the deferred deposit
26 transaction during the period of deployment and for 30 days
27 following the service member's return from deployment.

28 (d) The payment on the deferred deposit transaction shall be
29 deferred for the duration of the service member's deployment
30 and shall apply only to a deferred deposit transaction entered into
31 by the military borrower prior to the date of deployment. The
32 amount of the payment deferred under this section shall be due in
33 full 30 days after the date of the service member's return from
34 deployment, ~~unless the military borrower requests a repayment~~
35 ~~plan pursuant to Section 23043.~~

36 ~~23043. (a) The licensee shall grant a military borrower a~~
37 ~~repayment plan upon written request by the military borrower.~~

38 ~~(b) The repayment plan shall have the following provisions:~~

39 ~~(1) A term of, at minimum, 120 days.~~

~~(2) At least three payments, consisting of an initial payment due not sooner than 13 days following execution of the plan or on or after the military borrower's pay date, with all subsequent payments due at least 13 days apart from each other or on or after the military borrower's pay date. A licensee may require that the payment dates in the repayment plan coincide with the service member's pay dates.~~

~~(3) All payments shall be approximately equal in amount, unless otherwise agreed to by the licensee and the military borrower.~~

~~(c) Pursuant to subdivision (b) of Section 23036, the licensee shall not charge the military borrower directly or indirectly any finance charges, interest, fees, or other charges for requesting or using a repayment plan.~~

~~(d) Performance of the terms of the repayment plan extinguishes the military borrower's obligation on the deferred deposit transaction.~~

~~(e) Upon the military borrower making all payments required under the repayment plan, the licensee shall return the uncashed check originally used as the basis for the deferred deposit transaction to the military borrower.~~

~~(f) If the military borrower fails to make a payment under the repayment plan within five days of its due date, the licensee may initiate efforts to collect the total amount owing under the repayment plan.~~

~~(g) The military borrower or the military borrower's representative may prepay any amount due under the repayment plan at any time without charge or penalty.~~

~~(h) Notwithstanding any other provision of law, a licensee shall not make a deferred deposit transaction with a military borrower in either of the following circumstances:~~

~~(1) When the licensee knows that the military borrower has a repayment plan with another licensee with remaining payments due under it.~~

~~(2) Within 14 days of the military borrower's payment of all payments required under the repayment plan with the licensee.~~

~~(i) A repayment plan granted to a military borrower under this section is an extension of payment terms under the original deferred deposit transaction agreement and is governed by this section and this division. A repayment plan is not a loan and is~~

1 ~~not subject to any other law or regulation governing the granting~~
2 ~~of credit.~~

3 23044. (a) Before engaging in a deferred deposit transaction
4 with a military borrower, a licensee shall provide to the military
5 borrower a written statement in at least 10-point type that clearly
6 and conspicuously states the prohibited practices and rights a
7 military borrower is afforded by law. The statement shall include,
8 but is not limited to, information describing the following
9 matters:

10 (1) The opportunity for deferral of payments on a deferred
11 deposit transaction under Section ~~23042~~ 23043.

12 ~~(2) The rights to a repayment plan under Section 23043.~~

13 ~~(3)~~

14 (2) The right of a military borrower to refuse to waive any
15 legal rights or procedures, including the right to refuse to agree to
16 binding arbitration with respect to any deferred deposit
17 transaction into which he or she enters.

18 ~~(4) The inability of a licensee to charge any additional fee,~~
19 ~~interest, finance charge, or other charge of any kind as a~~
20 ~~condition of granting a repayment plan or during the period of~~
21 ~~the repayment plan.~~

22 (b) The statement required by subdivision (a) shall include the
23 following:

24 YOU HAVE THE RIGHT TO REFUSE TO SIGN AN
25 AGREEMENT THAT WAIVES YOUR LEGAL RIGHTS OR
26 PROCEDURES, INCLUDING THE REQUIREMENT FOR
27 BINDING ARBITRATION. IF YOU DO NOT AGREE TO
28 WAIVE YOUR RIGHTS, THE REST OF THIS AGREEMENT
29 WILL NOT BE AFFECTED. BEFORE SIGNING ANY
30 AGREEMENT THAT WAIVES YOUR LEGAL RIGHTS OR
31 PROCEDURES, INCLUDING THE REQUIREMENT FOR
32 BINDING ARBITRATION, OR THIS AGREEMENT, YOU
33 SHOULD CONSULT A FINANCIAL COUNSELOR OR
34 ADVISOR AT YOUR MILITARY COMMAND.”

35 23044.2. The commissioner shall enact regulations specifying
36 the content of any statement required under this chapter. The
37 commissioner shall also mail a notice to licensees informing
38 them of changes in the law resulting from the enactment of this
39 chapter.

1 23044.3. A licensee that does not market deferred deposit
2 transactions to, or enter into those transactions with, service
3 members shall not be in violation of Section 394 of the Military
4 and Veterans Code.

5 23044.4. All other provisions of this division shall apply to
6 this chapter. If any provision of this chapter is held to be invalid,
7 that invalidity shall not affect any other provision of this chapter.

8 23044.5. This chapter shall remain in effect only until
9 January 1, 2009, and as of that date is repealed, unless a later
10 enacted statute, that is enacted before January 1, 2009, deletes or
11 extends that date.

12 23044.6. Nothing in this chapter shall preclude the
13 application or enforcement of a federal law or regulation that
14 provides alternative protections, that are greater than those
15 provided in this chapter, to a military borrower.

16 SEC. 2. (a) It is the intent of the Legislature in enacting
17 Chapter 2.5 (commencing with Section 23040) of Division 10 of
18 the Financial Code not to hamper efforts by the federal
19 government to address the problem of payday lending to the
20 military.

21 (b) *It is also the intent of the Legislature in enacting Chapter*
22 *2.5 (commencing with Section 23040) of Division 10 of the*
23 *Financial Code to directly respond to the Department of*
24 *Defense's findings that deferred deposit transactions have a*
25 *negative impact upon military readiness and troop morale. Due*
26 *to the unique circumstances that exist in a time of war, when our*
27 *brave men and women are answering the call to defend this*
28 *nation, it is the intent of the Legislature to provide protection for*
29 *those military borrowers who conduct deferred deposit*
30 *transactions under the California Deferred Deposit Transaction*
31 *Law. Given the unique circumstances that apply to military*
32 *borrowers, it is not the intent of the Legislature in enacting*
33 *Chapter 2.5 (commencing with Section 23040) of Division 10 of*
34 *the Financial Code under any circumstance to apply these*
35 *protections to borrowers who do not fit the definition of a*
36 *military borrower under Section 23040 of the Financial Code.*

37 SEC. 3. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the
2 penalty for a crime or infraction, within the meaning of Section
3 17556 of the Government Code, or changes the definition of a
4 crime within the meaning of Section 6 of Article XIII B of the
5 California Constitution.

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